



22 CFR Part 51

[Public Notice: 11609]

RIN 1400-AE68

Passports: Option for Passport Applicants Eligible to Apply by Mail for Renewal of Passports to Apply On-Line

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: Pursuant to Department regulations, the renewal of a U.S. passport must meet certain requirements to qualify for submission of an application by mail. The Department will now provide qualified applicants the option of submitting renewal applications by mail or on-line via the Department's official website. This amendment will provide more flexibility for the renewal applicant, will improve the customer experience, and eliminate the added burden, time, and cost to the customer by providing the on-line option as an alternative to the mail in process.

DATES: This final rule is effective on December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Kelly Cullum, Office of Adjudication, Passport Services, (202) 485-8800, or email PassportOfficeofAdjudicationGeneral@state.gov.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, Public Notice 11457 at 86 FR 43458, August 9, 2021 (the NPRM), with a request for comments to amend 22 CFR 51.21(b), (b)(2), (b)(3); and 51.8(a), (b), (c), and (d) to allow eligible applicants the option to apply on-line via the Online Passport Renewal (OPR) system. Applicants must meet all of the eligibility requirements for using OPR or will be referred to the paper application process. Applicants using OPR will enter their application information and upload their photos directly into the OPR system and submit their payment through pay.gov. This process will improve efficiency and accessibility by offering online verification of renewal eligibility, electronic photo upload, and electronic payment. Applications received through OPR will

automatically enter review queues at the passport agency, thus eliminating the physical application and processing at the Lockbox. The new OPR system will improve the customer experience, reduce operational and maintenance costs, and focus on data quality, protection, and traceability. The first release of the OPR system will be limited in its release and apply to persons in the United States who are submitting an application in the same name, gender marker, date of birth, and place of birth as the most recently issued passport of the same type with the intent that future releases will permit changes and be used by persons applying abroad.

The rule was discussed in detail in Public Notice 11457, as were the Department's reasons for the other changes to the regulations. The Department is now promulgating a final rule with minor changes from the proposed rule and no substantive change.

ANALYSIS OF COMMENTS: The Department provided 60 days for comment on the NPRM. The comment period closed October 8, 2021.

The Department received twelve responsive comments, none of which were opposed to this amendment. Several commenters noted their concerns about possible identity theft and insisted on the use of the latest technology to protect applicants. Online passport applications are subject to the same rigorous protection of personally identifiable information (PII) as physical applications. The Department processes passport applications, whether mailed or submitted online, on controlled workstations accessed by authorized employees only. The rollout of the OPR system is compliant with the Department's policy (5 FAM 772.1) in that "encryption and digital certificates must be integrated into the applications to the greatest extent possible."

Two commenters also requested that online payment be acceptable and specifically, that it include use of credit cards. As noted in the proposed rule, applicants using the OPR will submit payment through pay.gov which already accepts credit cards.

Two commenters discussed the need for online submission of supporting documents or using existing information in U.S. government databases to verify citizenship. They noted the difficulty of sending original vital records and naturalization certificates. As discussed in the

proposed rule, eligible OPR users will upload applications and photos directly to the system eliminating the need for paper-based applications. Adults renewing passports who are eligible to use OPR generally do not need to submit supporting documentation because the issuance of a prior passport serves as citizenship evidence. In most cases prior passport issuance information is already available in adjudication systems. The Department coordinates with federal agencies such as USCIS as well as vital records offices to protect the integrity of the passport application process, verify citizenship documentation, and confirm entitlement to a U.S. passport. Passport Services' modernization efforts include online document verification.

One commenter requested that the Department make OPR available for first-time applicants and another requested it be available for applicants located outside the United States. As defined in 22 CFR 51.21(a), first-time applicants (who by statute, 22 U.S.C. 213, are required to verify their application by an in person oath), applicants who have never been issued a passport in his or her own name, applicants who have not been issued a passport for the full validity period of 10 years within 15 years of the date of a new application, and minors under the age of 16 must apply for a passport by appearing in person before a passport agent or passport acceptance agent. The applicant must verify the application by oath or affirmation before the passport agent or passport acceptance agent, sign the completed application, provide photographs and any other information or documents as prescribed or requested by the Department. These requirements cannot be addressed through OPR. As noted in the draft rule, the first release of the OPR system will apply to persons in the United States, with the intent for future releases applying to persons abroad.

One commenter stated that applicants requesting a change in gender marker and those identifying as any gender besides male or female should be ineligible for OPR due to fraud concerns. The Department takes fraud very seriously and reviews all passport applications for possible fraud. Adjudicators receive extensive fraud training and utilize facial recognition technology and social security and birth information data verification to detect fraud, regardless

of the method of application. Thus, while the Department appreciates the commenter's concern, it does not believe that the possibility of someone successfully committing fraud would be any greater after OPR is operational.

Regarding gender markers and other changes that an applicant might wish to make to their information, the proposed regulatory text (proposed section 51.21(b)(iii)) provided that the "first release of the OPR system will require that the application be submitted in the same name, sex [i.e., gender] marker, date of birth, and place of birth as the most recently issued passport of the same type with the intent that future releases will permit changes". This text was removed from the text of the final rule because the Department determined that it is more appropriate for a statement of policy in the preamble and is not regulatory text. It does, however, reflect the limitation on the first release of the OPR system, but not Department policy for future releases.

While supportive of OPR, several commenters noted the continued need for the Department to reduce service times and paperwork and the assumption that OPR would provide faster processing times. As noted in the draft rule, OPR will provide more flexibility for the renewal applicant, will improve the customer experience, and eliminate the added burden, time, and cost to the customer by providing the on-line option as an alternative to the mail in process. Processing times listed on www.travel.state.gov are still Department standard for all passport applications, physical and electronic. Future expansion of OPR may allow for changes to expected service commitment times for online applications. The Department continuously strives to reduce passport processing service times through modernization initiatives.

One person suggested maintaining a walk-in passport agency in every U.S. city with a population greater than 250,000. This is outside the scope of the proposed rule. However, the Department coordinates with a network of approximately 7,500 passport application acceptance facilities across the United States, all of which offer in-person service (though they may be by appointment only, rather than offering walk-in service). The network of passport application acceptance facilities provides convenient, nationwide access.

Another commenter requested that the Department coordinate with USCIS to automatically link the passport application to the naturalization process. This is outside the scope of the proposed rule. However, the Department regularly coordinates with USCIS to provide passport application acceptance services at naturalization ceremonies.

REGULATORY FINDINGS

Administrative Procedure Act

The Department published this rulemaking as a proposed rule and provided 60 days for public comment. The Department finds good cause for the effective date to be less than 30 days from date of publication. As stated in *American Bankers Ass'n v. NCUA*, 38 F. Supp. 2d 114, 139-40 (D.D.C. 1999), according to the legislative history of the APA, the purpose for deferring the effectiveness of a final rule under § 553(d) was to “afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.” S. REP. NO. 79-752, at 15 (1946). In the same vein, the D.C. Circuit has explained that “the purpose of the thirty-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. FCC*, 316 U.S. App. D.C. 259, 78 F.3d 620, 630 (D.C. Cir. 1996).

There is no requirement for anyone to “adjust their behavior” or prepare for anything prior to this rule going into effect. Those who do not wish to renew their passports using the online procedure still have the current DS-82 available to them. The 30-day notice requirement of § 553(d) is “subject to the rule of prejudicial error.” *See* 5 U.S.C. 706; *Petaluma FX Partners, LLC v. Commissioner*, 416 U.S. App. D.C. 411, 420, 792 F.3d 72, 81 (2015).

In addition, the Department is providing a benefit to the public by this rulemaking. The Department estimates that the online application will take approximately five minutes to complete, as opposed to 40 minutes for the DS-82. OPR saves up to three weeks for initial application processing that includes mailing and receipt at the lockbox facility as well as the candling (fee processing, scanning, and batching) of the applications for physical transmission to

passport agencies. Additionally, customers save time and money for transit to and from a post office for mailing, the price of an envelope, and either the cost of first-class stamp or express mail fees – of between \$0.58 to \$26.60 per application. Use of OPR allows the customer to create and submit a digital application, upload their photograph, and make a payment via pay.gov from a computer or mobile device with no physical/paper application involved.

Therefore, the Department finds good cause to publish this rule without a delayed effective date under 5 U.S.C. 553(d)(1) and (3).

Regulatory Flexibility Act

The Department of State certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule gives greater flexibility to applicants applying to renew their U.S. passport.

Unfunded Mandates Act of 1995

This final rule does not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it does not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act. This rule does not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Office of Information and Regulatory Affairs has designated this rule “not significant” under Executive Order 12866. As explained in the preamble and the APA section above, the

benefits of the rule outweigh any costs to the public (which the Department assesses will be minimal).

Executive Order 13132 – Federalism

This rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking is related to the information collection described in OMB Control No. 1405-0020 (Form DS-82). The web-based version of this form was approved in July 2021.

List of Subjects in 22 CFR Part 51

Passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 51 is amended as follows:

PART 51 – PASSPORTS

1. The authority citation for part 51 continues to read as follows:

Authority: [8 U.S.C. 1504](#); [18 U.S.C. 1621](#); [22 U.S.C. 211a](#), [212](#), [212b](#), [213](#), [213n](#) ([Pub. L. 106-113](#) Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A-430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2714a, 2721, & 3926; [26 U.S.C. 6039E](#); [31 U.S.C. 9701](#); [42 U.S.C. 652\(k\)](#) [Div. B, Title V of Pub. L. 103-317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603, [3 CFR](#), [1966-1970 Comp.](#), p. 570; [Pub. L. 114-119](#), 130 Stat. 15; Sec. 1 of

[Pub. L. 109-210](#), 120 Stat. 319; Sec. 2 of [Pub. L. 109-167](#), 119 Stat. 3578; Sec. 5 of [Pub. L. 109-472](#), 120 Stat. 3554; [Pub. L. 108-447](#), Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2809; [Pub. L. 108-458](#), 118 Stat. 3638, 3823 (Dec. 17, 2004).

2. Revise § 51.8 to read as follows:

§51.8 Submission of currently valid passport.

(a) When applying for a new passport in person or by mail, an applicant must submit for cancellation any currently valid passport of the same type.

(b) When applying for a new passport on-line, an applicant must have the currently valid passport of the same type available for cancellation via the on-line process.

(c) If an applicant is unable to produce a passport under paragraph (a) or (b) of this section, they must submit a signed statement in the form prescribed by the Department setting forth the circumstances regarding the disposition of the passport.

(d) The Department may deny or limit a passport if the applicant has failed to provide a sufficient and credible explanation for lost, stolen, altered or mutilated passport(s) previously issued to the applicant, after being given a reasonable opportunity to do so.

3. Amend § 51.21 by revising the paragraph (b) heading, paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 51.21 Execution of passport application.

* * * * *

(b) *Application by mail or on-line— persons in the United States.* ***

(2) A person in the United States who previously has been issued a passport valid for 10 years in their own name may apply for a new passport by filling out, signing, and submitting an on-line application via the Department’s official website if:

(i) The applicant’s most recently issued passport was issued when the applicant was 16 years of age or older, and has one year or less of validity remaining;

(ii) The application is made not more than 15 years following the issue date of the most recently issued passport of the same type;

(iii) The most recently-issued passport of the same type is available for verification via the on-line process.

(3) The applicant must also provide photographs as prescribed by the Department and pay the applicable fees prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1).

* * * * *

Kevin E. Bryant,

Deputy Director,

Office of Directives Management,

U.S. Department of State.

BILLING CODE 4710-06

[FR Doc. 2021-27404 Filed: 12/21/2021 8:45 am; Publication Date: 12/22/2021]